

9.107 Surveys of nonprofit agencies serving people who are blind or have other severe disabilities under the Javits-Wagner-O'Day (JWOD) Program.

(a) The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee), as authorized by 41 U.S.C. 46-48c, determines what supplies and services Federal agencies are required to purchase from JWOD participating nonprofit agencies serving people who are blind or have other severe disabilities (see subpart 8.7). The Committee is required to find a JWOD participating nonprofit agency capable of furnishing the supplies or services before the nonprofit agency can be designated as a mandatory source under the JWOD Program. The Committee may request a contracting office to assist in assessing the capabilities of a nonprofit agency.

(b) The contracting office, upon request from the Committee, shall request a capability survey from the activity responsible for performing preaward surveys, or notify the Committee that the JWOD participating nonprofit agency is capable, with supporting rationale, and that the survey is waived. The capability survey will focus on the technical and production capabilities and applicable preaward survey elements to furnish specific supplies or services being considered for addition to the Procurement List.

(c) The contracting office shall use the Standard Form 1403 to request a capability survey of organizations employing people who are blind or have other severe disabilities.

(d) The contracting office shall furnish a copy of the completed survey, or notice that the JWOD participating nonprofit agency is capable and the survey is waived, to the Executive Director, Committee for Purchase from People Who Are Blind or Severely Disabled.

[59 FR 67029, Dec. 28, 1994]

Subpart 9.2—Qualifications Requirements

SOURCE: 50 FR 35476, Aug. 30, 1985, unless otherwise noted.

9.200 Scope of subpart.

This subpart implements 10 U.S.C. 2319 and 41 U.S.C. 253(e) and prescribes policies and procedures regarding qualification requirements and the acquisitions that are subject to such requirements.

9.201 Definitions.

As used in this subpart—

Qualified bidders list (QBL) means a list of bidders who have had their products examined and tested and who have satisfied all applicable qualification requirements for that product or have otherwise satisfied all applicable qualification requirements.

Qualified manufacturers list (QML) means a list of manufacturers who have had their products examined and tested and who have satisfied all applicable qualification requirements for that product.

[50 FR 35476, Aug. 30, 1985, as amended at 53 FR 34227, Sept. 2, 1988; 66 FR 2128, Jan. 10, 2001]

9.202 Policy.

(a)(1) The head of the agency or designee shall, before establishing a qualification requirement, prepare a written justification—

(i) Stating the necessity for establishing the qualification requirement and specifying why the qualification requirement must be demonstrated before contract award;

(ii) Estimating the likely costs for testing and evaluation which will be incurred by the potential offeror to become qualified; and

(iii) Specifying all requirements that a potential offeror (or its product) must satisfy in order to become qualified. Only those requirements which are the least restrictive to meet the purposes necessitating the establishment of the qualification requirements shall be specified.

(2) Upon request to the contracting activity, potential offerors shall be provided—

(i) All requirements that they or their products must satisfy to become qualified;

(ii) At their expense (but see 9.204(a)(2) with regard to small businesses), a prompt opportunity to demonstrate their abilities to meet the standards specified for qualification using qualified personnel and facilities of the agency concerned, or of another agency obtained through interagency agreements, or under contract, or other methods approved by the agency (including use of approved testing and evaluation services not provided under contract to the agency).

(3) If the services in (a)(2)(ii) above are provided by contract, the contractors selected to provide testing and evaluation services shall be—

(i) Those that are not expected to benefit from an absence of additional qualified sources; and

(ii) Required by their contracts to adhere to any restriction on technical data asserted by the potential offeror seeking qualification.

(4) A potential offeror seeking qualification shall be promptly informed as to whether qualification is attained and, in the event it is not, promptly furnished specific reasons why qualification was not attained.

(b) When justified under the circumstances, the agency activity responsible for establishing a qualification requirement shall submit to the competition advocate for the procuring activity responsible for purchasing the item subject to the qualification requirement, a determination that it is unreasonable to specify the standards for qualification which a prospective offeror (or its product) must satisfy. After considering any comments of the competition advocate reviewing the determination, the head of the procuring activity may waive the requirements of 9.202(a)(1)(ii) through (4) above for up to 2 years with respect to the item subject to the qualification requirement. A copy of the waiver shall be furnished to the head of the agency or other official responsible for actions under 9.202(a)(1). The waiver authority provided in this paragraph does not apply with respect to qualification requirements contained in a QPL, QML, or QBL.

(c) If a potential offeror can demonstrate to the satisfaction of the contracting officer that the potential offeror (or its product) meets the standards established for qualification or can meet them before the date specified for award of the contract, a potential offeror may not be denied the opportunity to submit and have considered an offer for a contract solely because the potential offeror—

(1) Is not on a QPL, QML, or QBL maintained by the Department of Defense (DOD) or the National Aeronautics and Space Administration (NASA); or

(2) Has not been identified as meeting a qualification requirement established after October 19, 1984, by DOD or NASA; or

(3) Has not been identified as meeting a qualification requirement established by a civilian agency (not including NASA).

(d) The procedures in subpart 19.6 for referring matters to the Small Business Administration are not mandatory on the contracting officer when the basis for a referral would involve a challenge by the offeror to either the validity of the qualification requirement or the offeror's compliance with such requirement.

(e) The contracting officer need not delay a proposed award in order to provide a potential offeror with an opportunity to demonstrate its ability to meet the standards specified for qualification. In addition, when approved by the head of an agency or designee, a procurement need not be delayed in order to comply with 9.202(a).

(f) Within 7 years following enforcement of a QPL, QML, or QBL by DOD or NASA, or within 7 years after any qualification requirement was originally established by a civilian agency other than NASA, the qualification requirement shall be examined and revalidated in accordance with the requirements of 9.202(a). For DOD and NASA, qualification requirements, other than QPL's, QML's, and QBL's, shall be examined and revalidated within 7 years after establishment of the requirement under 9.202(a). Any periods for which a waiver under 9.202(b) is in effect shall be excluded in computing the 7 years within which review and revalidation must occur.

[50 FR 35476, Aug. 30, 1985, as amended at 53 FR 34227, Sept. 2, 1988]